

EXHIBIT 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
(Indianapolis Division)**

**RED BARN MOTORS, INC.,
PLATINUM MOTORS, INC., and
MATTINGLY AUTO SALES, INC.,
individually, and on behalf of other
members of the general public
similarly situated,**

v.

**NEXTGEAR CAPITAL, INC.,
F/K/A DEALER SERVICES
CORPORATION,**

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**DOCKET NO. 1:14-cv-01589-TWP-DLP
CLASS ACTION**

**AFFIDAVIT OF JOHN BURLACU, SENIOR DIRECTOR OF
DONLIN, RECANO & COMPANY, INC.**

I, John Burlacu declare:

1. I am a Senior Director employed by Donlin, Recano & Company, Inc. (“Donlin Recano”) located at 6201 15th Avenue, Brooklyn, New York 11219. The following statements herein are of my personal knowledge.

2. Donlin Recano was engaged by the Plaintiffs to supervise and administer the procedures set forth in the *Plaintiffs’ Renewed Motion to Proceed with Class Notice to Known Class Members and Proposed Procedures for Providing Notice to Class Members Pursuant to Rule 23(c)(2)(b)* (Dkt. 323) (the “Motion”). In accordance with the Motion, Donlin Recano caused the *Notice of Pendency of Class Action Lawsuit* (the “Notice”), attached hereto as Exhibit A, to be mailed to known class members, implemented a website dedicated to the above-referenced action, and established a toll-free telephone number.

Mailing of the Notice

3. Class members were identified as members of either a Nationwide Class or a California Subclass. The Nationwide Class certified by the United States District Court for the Southern District of Indiana includes all used car dealers in the United States of America that were parties to a Floorplan Agreement with DSC, n/k/a NextGear, effective during the time period of January 2005 through July 2013, and that floor planned one or more vehicles with DSC/NextGear under such agreement, excluding any dealer that signed an agreement containing an arbitration or class action waiver provision. The California Subclass certified by the United States District Court for the Southern District of Indiana includes all California used car dealers that were parties to a Floorplan Agreement with DSC, n/k/a NextGear, effective during the time period of January 2005 through July 2013, whose Floorplan Agreement requires the application of California law, and that floor planned one or more vehicles with DSC/NextGear under such agreement, excluding any dealer that signed an agreement containing an arbitration or class action waiver provision. Excluded from the class were the 105 dealers within the original 17,411 class members who have since entered new contracts with NextGear and have agreed to arbitrate their disputes with NextGear.

4. On or around April 14, 2020, Donlin Recano received a list of 17,306 known class members from Plaintiffs' Counsel and processed the list through the USPS National Change of Address database. After processing the class members list, Donlin Recano created a class member database which included the most up to date mailing information.

5. On April 24, 2020, Donlin Recano caused to serve the Notice via First Class U.S. Mail upon the known class members (collectively 17,306 packages). The individual names and addresses, along with a unique barcode, were printed on the mailing envelopes for ease of identifying and processing returned mail.

Website

6. Donlin Recano designed and implemented a website dedicated to the above-referenced action. The website, which is located at www.donlinrecano.com/rbm, provides an overview of the class action, access to related documents, frequently asked questions, and contact information. Visitors to the website have the ability to download, free of charge, copies of the Notice, the *Order Regarding Class Notice* (Dkt. 326), the *Order on Pending Motions* (Dkt. 315), and the Opinion from the United States Court of Appeals for the Seventh Circuit (7th Cir. Dkt. 26). The website was operational beginning April 24, 2020 and is accessible 24 hours a day, 7 days a week.

Toll-Free Hotline Service

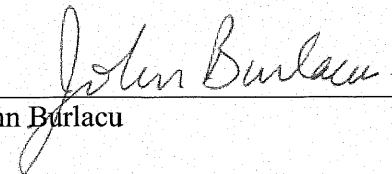
7. Donlin Recano created and maintains a toll-free hotline for callers to contact for information regarding the above-referenced action. Callers are assisted by live operators who answer their questions. Callers can also obtain information and request copies of the Notice from the live operators. The toll-free phone number is 1-866-745-0266 and was fully functional on April 24, 2020. The call center's dedicated representatives were trained on the specifics of the action and are available Monday through Friday from 9:00 AM to 5:00 PM EST. During non-business hours, callers are greeted with a voicemail message instructing them to visit the case website for more information and to leave their name, phone number, and a brief message. All inquiries are responded to in a timely manner.

Status of Class Opt-Outs


8. Donlin Recano has received notice from four class members that they would like to opt-out of the class. Donlin Recano has received four letters of exclusion from these opt-out creditors, attached hereto as Exhibit B.

9. The opt-out period has concluded.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge. Executed this July 7th, 2020 in Brooklyn, New York.

By 
John Burlacu

Sworn before me this
July 7th, 2020.


Notary Public

Sung Jae Kim
Printed Name of Notary Public

My Commission expires: 9/14/21

SUNG JAE KIM
NOTARY PUBLIC STATE OF NEW YORK
QUEENS COUNTY
LIC. #01KI6211176
MY COMM. EXP. SEPTEMBER 14, 2021

EXHIBIT A

IF YOU ARE A USED CAR DEALER WHO HAD FLOORPLAN AGREEMENT(S) WITH DEALER SERVICES CORPORATION (“DSC”), NOW KNOWN AS NEXTGEAR CAPITAL, INC., AT ANY TIME BETWEEN JANUARY 2005 AND JULY 2013, AND FLOOR PLANNED ONE OR MORE VEHICLES WITH DSC/NEXTGEAR UNDER SUCH AGREEMENT, EXCLUDING ANY DEALER THAT SIGNED AN AGREEMENT CONTAINING AN ARBITRATION OR CLASS ACTION WAIVER PROVISION, YOU MAY BE A CLASS MEMBER IN A CASE AGAINST NEXTGEAR THAT HAS BEEN CERTIFIED BY A FEDERAL COURT.

**THIS LAWSUIT MAY AFFECT YOUR RIGHTS
A COURT AUTHORIZED THIS NOTICE
THIS IS NOT A SOLICITATION FROM A LAWYER**

NOTICE OF PENDENCY OF CLASS ACTION LAWSUIT

Used car dealers have sued NextGear Capital, Inc. (“NextGear”), formerly known as Dealer Services Corporation (“DSC”), alleging that NextGear breached its contracts with used car dealers by charging interest on money not yet actually loaned with respect to certain advances, resulting in additional interest charges that the dealers never agreed to pay. These are, however, only the dealers’ allegations. The Court has not yet decided if the used car dealers are correct, and NextGear denies the allegations.

The Court has certified this case as a class action on behalf of all used car dealers who meet the class definition in Paragraph 1 below. The case is pending in the United States District Court for the Southern District of Indiana.

Please review this notice. If you do not want to be part of the class, you must exclude yourself by a letter postmarked no later than June 26, 2020 (See paragraph 10 below for details).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	Stay in this lawsuit. Await the outcome. Give up your right to sue separately. By doing nothing, you keep the possibility of getting money or benefits that may come from a class trial or a settlement. You cannot, however, recover or try your claims twice; so, by participating in the class action, you give up any rights to individually sue NextGear about the legal claims in this case.
ASK TO BE EXCLUDED	Get out of this lawsuit. Get no benefits from it. Sue separately. If you ask to be excluded, you will not receive any money that is later obtained in a class trial or a settlement. But, you keep any rights to sue NextGear separately about the legal claims in this case if you choose to do so. You will need your own lawyer.

BASIC INFORMATION

1. Why did I get this notice?

All used car dealers identified from NextGear Capital Inc.'s records as being members of either a Nationwide Class or a California Subclass as described below were mailed this Notice.

The Nationwide Class certified by the United States District Court for the Southern District of Indiana includes all used car dealers in the United States of America that were parties to a Floorplan Agreement with DSC, n/k/a NextGear, effective during the time period of January 2005 through July 2013, and that floor planned one or more vehicles with DSC/NextGear under such agreement, excluding any dealer that signed an agreement containing an arbitration or class action waiver provision.

The California Subclass certified by the United States District Court for the Southern District of Indiana includes all California used car dealers that were parties to a Floorplan Agreement with DSC, n/k/a NextGear, effective during the time period of January 2005 through July 2013, whose Floorplan Agreement requires the application of California law, and that floor planned one or more vehicles with DSC/NextGear under such agreement, excluding any dealer that signed an agreement containing an arbitration or class action waiver provision.

You have legal rights and options. This case is *Red Barn Motors, Inc., et al. vs. NextGear Capital Inc. f/k/a Dealer Services Corporation, et al.*, Case No. 1:14-cv-01589-TWP-DLP (S.D. Ind.). If you are not sure whether you are included in this class action, you can get free help by email to rbminfo@donlinrecano.com, at www.donlinrecano.com/rbm, or by calling 1-866-745-0266.

2. What is a class and who is involved?

In a class action, one or more people with a claim similar to yours file a lawsuit on behalf of other people who have similar claims. That person or persons are the "Class Representative(s)."

Class Representatives who sue — and all the Class Members like them — are called the Plaintiffs. The company that they sued here, NextGear, formerly known as DSC, is called the Defendant. In many class actions, to avoid the need for multiple lawsuits, one court resolves the issues for everyone in the Class — except for those people who choose to exclude themselves from the Class. The used car dealers who will act as the Class Representatives are Red Barn Motors, Inc., Platinum Motors, Inc., and Mattingly Auto Sales, Inc.

3. Why is this lawsuit a class action?

In this lawsuit, the Court decided that the claims asserted against Defendant can proceed as a class action and because the Plaintiffs satisfied the necessary requirements of federal law governing class actions. The Court determined that a class action is superior to requiring thousands of used car dealers to file individual lawsuits, because it will be more efficient for used car dealers and the court system.

THE CLAIMS IN THE LAWSUIT

4. What is the lawsuit about?

According to Plaintiffs: Plaintiffs, on their own behalf and on behalf of the members of the Class, allege that NextGear breached their contracts with Plaintiffs by charging interest on money not yet actually loaned with respect to certain advances, resulting in additional interest charges that the used car dealers never agreed to pay.

According to Defendant: The Defendant, NextGear, denies these allegations, denies that it breached the contracts with Plaintiffs, and denies all liability.

5. What are the Plaintiffs asking for on behalf of the Class?

Plaintiffs are asking the Court to find that Defendant's wrongful conduct caused money damages in an amount to be determined at trial, including the costs of bringing the lawsuit, which include reasonable attorneys' fees and litigation expenses, as well as pre-judgment and post-judgment interest on all damages.

6. Has the Court decided who is right?

The Court has not decided whether Plaintiffs or Defendant are correct, or whether the used car dealers have suffered any damages. The Court has made a number of legal rulings in the case, and those rulings, along with the pleadings filed by Plaintiffs and Defendant, are available at the following website maintained by the Class Notice Administrator at www.donlinrecano.com/rbm.

By certifying this lawsuit as a class action and issuing this notice, the Court is not suggesting that the Plaintiffs will win or lose the case. The purpose of a class action is to decide those issues on behalf of all Class Members in the class action.

7. Is there any money available now?

No money is available now. No money will be available unless and until Defendant and Plaintiffs reach a settlement or the Plaintiffs prevail at trial and following all appeals. There is no guarantee that money will ever be obtained. If it is, you will be notified of your entitlement to recovery and how to obtain it. To be eligible for any recovery as part of this class action lawsuit, you must remain in the class. If you remain in the class and no benefits are obtained, you will have no right to seek recovery of any damages or other relief from Defendant.

YOUR RIGHTS AND OPTIONS

8. What happens if I do nothing at all?

If you do nothing, you will be a Class Member. If Plaintiffs win, you may be entitled to money as determined by the Court. If Plaintiffs lose, you will not be able to sue the Defendant again for the claims in this lawsuit and will be bound by the outcome of this case. If the case settles, you may or may not be afforded another opportunity to exclude yourself from the class as determined by the Court, but you will be given the right to object to the terms of any settlement. The Court will only permit a settlement of your claims if it is fair and reasonable.

9. Why would I ask to be excluded?

You must ask to be excluded if you want to sue the Defendant individually, or if you do not want the right to participate in any recovery that might occur in the class action. If you have already filed an individual lawsuit and want to proceed in your own lawsuit, rather than through this class action, you will have to ask to be excluded. If you make the choice to be excluded and to pursue a lawsuit individually, you may have to hire your own lawyer, respond to discovery, potentially have your deposition taken, and appear and prove your claims at trial.

If you stay in the class action, you will not have to do anything unless and until a recovery is obtained. At that point, the Court will notify you what you need to do to receive your share of the recovery.

Because your claims will be subject to a time deadline, which may have already passed, if you want to exclude yourself from the class to file an individual case, you should consult a lawyer first.

10. How do I ask to be excluded?

To opt out of being a Class Member, you must timely return a written request to be excluded from the Class, which must include all of the following: (i) the Class Member's name; (ii) the Class Member's current mailing address; and (iii) the statement "I want to be excluded from the Red Barn vs. NextGear case."

To be timely, a written request to be excluded from the Class must be postmarked on or before June 26, and must be mailed, with sufficient postage prepaid and affixed, to:

Red Barn v. NextGear, c/o
Donlin, Recano & Company, Inc.
PO Box 199043
Blythebourne Station
Brooklyn, NY 11219

11. Do I have a lawyer in the class action?

The Court has appointed several lawyers to represent the Class. These lawyers are referred to as Class Counsel. These lawyers have experience in prosecuting complex cases on behalf of Plaintiffs. The Court has determined that they are qualified and that they have ably represented the interests of Class Members to date.

Class Counsel are:

CATHERINE E. LASKY
KERRY A. MURPHY
LASKY MURPHY LLC
715 Girod Street, Suite 250
New Orleans, Louisiana 70130

KATHLEEN ANN DELANEY
DELANEY & DELANEY LLC
3646 North Washington Blvd.
Indianapolis, IN 46205
Telephone: (317) 920-0400

GLADSTONE N. JONES, III
LYNN E. SWANSON
JONES, SWANSON, HUDDALL &
GARRISON, L.L.C.
601 Poydras Street, Suite 2655
New Orleans, Louisiana 70130

CASSIE E. FELDER
THE CASSIE FELDER LAW FIRM
7515 Jefferson Hwy., #313
Baton Rouge, LA 70806
Telephone: (504) 232-1733

JAMES M. GARNER
RYAN D. ADAMS
MATTHEW M. COMAN
SHER GARNER CAHILL RICHTER
KLEIN & HILBERT, L.L.C.
909 Poydras Street, Suite 2800
New Orleans, Louisiana 70112

12. Should I get my own lawyer?

If you decide to stay in the Class, you do not need to hire your own lawyer, but you may do so. Class Counsel, who was appointed by the Court, is working on your behalf.

13. How will the lawyers be paid?

Class Counsel are working on a contingency-fee basis. You will not have to pay them anything if there is no recovery. They will get paid only if they get money for the Class, whether by favorable judgment or settlement. If that occurs, they may ask the Court for their fees and expenses. The Court will only award fees and expenses that it finds reasonable. If the Court grants Class Counsel's request, the fees and expenses would be deducted from any money obtained for the Class unless a settlement provides otherwise.

14. How and when will the Court decide the case?

If the case is not resolved by a settlement, Class Counsel will have to prove the Plaintiffs' claims at a trial. During the trial, the Judge will hear evidence offered by both sides to help her reach a decision about whether Plaintiffs or Defendant is right about the claims in the lawsuit.

15. Do I have to come to trial?

If you stay in the class, you will not have to testify at the trial and will not be required to attend. Class Counsel will present the case for the Plaintiffs, and Defendant will present the defenses. You and your own lawyer (if applicable) are welcome to attend the trial at your own expense. If Plaintiffs prevail at trial on the class issues, the Court will inform you as to the information you may need to provide to share in a money recovery (if any).

16. Will I get money after the Court rules?

If you stay in the class action, and Plaintiffs obtain money as a result of the trial or a settlement, you will be notified about how to receive any share recovered on your behalf.

GETTING MORE INFORMATION

17. Is more information about the lawsuit available?

If you have any questions or require additional information, you should make contact with the Class Notice Administrator, Donlin Recano, who can answer questions regarding your status as a class member, the procedures for opting out, deadlines, and the status of the case, by one of the following means:

By phone at 1-866-745-0266

By email at rbminfo@donlinrecano.com

Or you can review the case website which will show frequently asked questions and more information about the case at www.donlinrecano.com/rbm.

**PLEASE DO NOT CONTACT THE COURT
OR THE COURT CLERK REGARDING THIS MATTER**

IMPORTANT: You should promptly notify the Notice Administrator via rbminfo@donlinrecano.com or 1-866-745-0266:

- *If you received this Notice at an address different from the address to which it was mailed, or*
- *If your address changes in the future, or*
- *If you did not receive a Notice by mail but nevertheless believe you are a Class Member.*

EXHIBIT B


MAY 12th 2020

TO: DONLIN, RECANO AND COMPANY

FROM: CHARLES LENNIG BUELL
UNIQUE CONCEPTS AUTOMOTIVE (NOT IN BUSINESS)
3040 E. LUPINE AVE
PHOENIX, AZ. 85028-1926


"I WANT TO BE EXCLUDED FROM THE RED BARN VS
NEXT GEAR CASE."

Charles Lennig Buell


To whom it may concern:

I want to be excluded from the Red Barn v. NextGear case.

Mr. Van Flury, president and sole stockholder of:
Consolidated Motors, Inc.
12630 N. 103rd Avenue, suite 111
Sun City, AZ 85351

By: 
Mr. Van Flury

Dated: June 26, 2020.

Original of the foregoing Sent by Certified Mail, Return Receipt requested: 7014 2120
0001 8888 2718

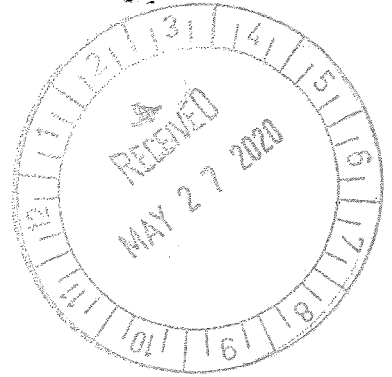
Red Barn V. Next Gear, c/o
Donlin, Recano & Company, Inc.
PO Box 199043
Blythebourne Station
Brooklyn, NY 11219

on: June 26, 2020.

by: 
Van Flury

EL AMIGO AUTO SALES, INC.

927 BROADWAY
ROCKFORD IL 61104
Phone: 815-489-0994 Fax: 815-489-0094



May 7th, 2020

Rockford, Illinois

Red Barn v. NextGear, c/o
Donlin, Recano & Company, Inc.
PO Box 199043
Blythebourne Station
Brooklyn, NY 11219

To Whom It May Concern,

It has been brought to our attention there is a lawsuit against NextGear Capital Inc.
We, EL AMIGO AUTO SALES INC, PREVIOUSLY EL AMIGO AUTO SALES,
Located at 927 Broadway in Rockford, Illinois 61104, "**we want to be excluded from the
Red Barn vs. NextGear case**".

We **do not** wish to be a part of this lawsuit or be associated in any way. We
appreciate the time you took to inform us about the case.

If further paperwork or information is needed please do not hesitate to contact us at the
phone number or fax number noted above.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maria Alvarez".

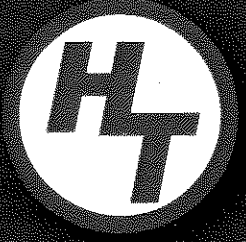
Maria Alvarez
President

El Amigo Auto Sales
927 Broadway St
Rockford, IL 61104
Phone: (815) 489-0994
Fax: (815) 489-0094
El Amigo Auto Sales, Inc.



650 New Ludlow Rd
South Hadley, MA 01075

P. 413-532-9898 (PSA)
P. 413-534-5373 (HT)
F. 413-536-6003



COLLISION • REPAIR • TOWING

April 30, 2020

RE: Red Barn v. NextGear, c/o
Donlin, Recano & Company, Inc.
PO box 199043
Blythebourne Station
Brooklyn, NY 11219

William E. Johnson
650 New Ludlow Rd.
South Hadley, Ma 01075

To Whom It May Concern,

I William E. Johnson want to be excluded from the Red Barn vs. NextGear Case. I am aware that I will not receive any money that is later obtained in a class trail or settlement.

Best Regards,

William E. Johnson

William E. Johnson

RECEIVED
2020 MAY -4 PM 4: 16
DONLIN RECANO & CO. INC.

Cred no. 6047